

1 HONORABLE BENJAMIN H. SETTLE  
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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT SEATTLE**

10 ROBERT KELLY, ERYN LEARNED, AND  
11 KERRY WANO, on behalf of themselves  
12 and all others similarly situated,

13 Plaintiffs,

14 vs.

15 THE MCCLATCHY COMPANY, LLC, a  
16 Delaware corporation,

17 Defendant.

18 Civil Action No. 3:21-cv-05468-BHS-DWC

19 **REQUEST FOR JUDICIAL NOTICE IN**  
20 **SUPPORT OF DEFENDANT'S MOTION**  
21 **TO TRANSFER VENUE**

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
23 NOTICE, pursuant to Federal Rule of Evidence 201, Defendant The McClatchy Company, LLC  
24 (“McClatchy”), by and through its counsel of record, hereby request this Court take judicial notice  
25 of the documents and information listed below. Judicial Notice is requested in support of  
26 McClatchy’s Motion to Transfer Venue and Stay Proceedings.

27 **1. American Arbitration Association, Consumer Arbitration Rules (2014)**

28 Federal Rule of Evidence 201 provides that a federal court may take judicial notice of facts  
29 not subject to reasonable dispute if (1) “generally known within the trial court’s territorial  
30 jurisdiction” or (2) “capable of accurate and ready determination by resort to resources whose  
31 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also Khoja v. Orexigen*  
32 *Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018).

33 Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is “not

1 subject to reasonable dispute.” Fed. R. Evid. 201(b). A fact is “not subject to reasonable dispute”  
 2 if it is “generally known,” or “can be accurately and readily determined from sources whose  
 3 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)–(2). Accordingly, a court  
 4 “may take judicial notice of matters of public record without converting a motion to dismiss into  
 5 a motion for summary judgment.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)  
 6 (quotation marks and citation omitted). Judicial notice of public records, including filings in other  
 7 court proceedings, is appropriate under Rule 201 if such records “have a direct relation to matters  
 8 at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244,  
 9 248 (9th Cir. 1992).

10 The matter requested to be judicially noticed is directly relevant to McClatchy’s Motion to  
 11 Transfer Venue and Stay Proceedings regarding the arbitration rules to which the parties agreed to  
 12 be bound. Attached hereto as **Exhibit A** is a copy of the American Arbitration Association,  
 13 Consumer Arbitration Rules (2014) available at <https://www.adr.org/sites/default/files/Consumer-Rules-Web.pdf>. (last visited August 10, 2021).

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15 **2. Table C–3, U.S. District Courts – Civil Federal Judicial Caseload Statistics  
 16 (March 31, 2021)**

17 Federal Rule of Evidence 201 provides that a federal court may take judicial notice of facts  
 18 not subject to reasonable dispute if (1) “generally known within the trial court’s territorial  
 19 jurisdiction” or (2) “capable of accurate and ready determination by resort to resources whose  
 20 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also Khoja*, 899 F.3d at 1002.

21 Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is “not  
 22 subject to reasonable dispute.” Fed. R. Evid. 201(b). A fact is “not subject to reasonable dispute”  
 23 if it is “generally known,” or “can be accurately and readily determined from sources whose  
 24 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)–(2). Accordingly, a court  
 25 “may take judicial notice of matters of public record without converting a motion to dismiss into  
 26 a motion for summary judgment.” *Lee*, 250 F.3d at 689 (quotation marks and citation omitted).  
 27 Judicial notice of public records, including filings in other court proceedings, is appropriate under  
 Rule 201 if such records “have a direct relation to matters at issue.” *Borneo*, 971 F.2d at 248.

1 The matter requested to be judicially noticed is directly relevant to McClatchy's Motion to  
2 Transfer Venue and Stay Proceedings public-interest factors relevant to a motion to transfer.  
3 Attached hereto as **Exhibit B** is a copy of Table C-3, U.S. District Courts – Civil Federal Judicial  
4 Caseload Statistics (March 31, 2021) available at <https://www.uscourts.gov/statistics/table/c-3/federal-judicial-caseload-statistics/2021/03/31> (last visited August 10, 2021), and as **Exhibit C**  
5 is a copy of Table C-5—U.S. District Courts—Civil Federal Judicial Caseload Statistics (March  
6 31, 2021), available at <https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2021/03/31> (last visited August 10, 2021).

10 DATED this 23<sup>rd</sup> day of August, 2021 LEWIS BRISBOIS BISGAARD & SMITH LLP

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13 /s/ Richard A. Meadows  
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18 *Attorneys for Defendant*

19 THE MCCLATCHY COMPANY, LLC

**CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that on August 23, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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Signed at Seattle, Washington this 23<sup>rd</sup> day of August, 2021.

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